

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today  
(1) was not written for publication in a law journal and  
(2) is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte CHRISTOPHER PETER OLSON,  
JOSEPH DANIEL COENEN, MARY JO MEYER,  
ERIC DONALD JOHNSON,  
SARAH JANE MARIE FREIBURGER,  
JEROME STEVEN VEITH,  
HEATHER SCHNECK MORTELL and  
ROBERT EUGENE VOGT

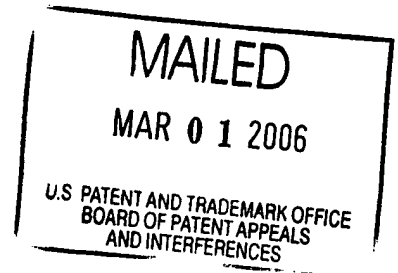
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Appeal No. 2005-2330  
Application <sup>1</sup> 10/026,123

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ON BRIEF

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Before KIMLIN, PAK, and OWENS, Administrative Patent Judges.

PAK, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the examiner's final rejection of claims 1 through 23, which are all of the claims pending in the above-identified application. We have jurisdiction pursuant to 35 U.S.C. § 134.

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<sup>1</sup> Application for patent filed December 17, 2001.

APPEALED SUBJECT MATTER

The subject matter on appeal is directed to a method of making an undergarment having "refastenable side seams". See the specification, page 1. Details of the appealed subject matter are recited in representative claims 1, 3, 4 through 6, 8 and 9, which are reproduced below<sup>2</sup>:

1. Method of making an undergarment having refastenable side seams from a substantially two-dimensional web, the web having two longitudinal sides and a first lateral edge extending perpendicularly to the longitudinal sides, the method comprising the steps of:
  - preconditioning the web to include at least four refastening surfaces;
  - transporting the web in a processing direction;
  - cutting the web along a second lateral edge to form a two-dimensional pre-form that includes the first and the second lateral edges and the two longitudinal edges; each longitudinal edge having two waist sections and a crotch section located intermediate the waist sections, the refastening surfaces are located adjacent and inboard on the waist sections;

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<sup>2</sup> According to the appellants' (Brief, page 10), the claims on appeal as follows:

Group I - Claims 1-3, 7, 11-14 and 20;  
Group II - Claims 4, 15, 16;  
Group III - Claims 5, 17 and 18;  
Group IV - Claims 6 and 19;  
Group V - Claim 8; and  
Group VI claims 9, 10 and 21-23.

Therefore, for purposes of this appeal, we select claims 1, 4, 5, 6, 8 and 9 and determine the propriety of the examiner's Section 103 rejections set forth in the Answer based on these claims alone. In re McDaniel, 293 F.3d 1379, 1384, 63 USPQ2d 1462, 1465-66 (Fed. Cir. 2002).

gripping the pre-form adjacent each waist section with a gripping means in four gripping areas, each gripping area being located near a respective refastening surface;

jointly rotating at least the gripping means which hold the gripping areas in the region of one of the lateral edges around at least one hinging axis extending substantially parallel to the lateral edges of the pre-form to place the first lateral edge generally parallel and opposite to the second lateral edge;

superimposing the refastening surfaces in a contacting relationship;

joining the superimposed refastening surfaces in a securing means, thus forming the undergarment; and

releasing the undergarment from the gripping means.

3. The method of claim 1 wherein the pre-form includes an exterior surface and a body-contacting surface opposite the exterior surface; and the waist sections define a front waist section and a back waist section.

4. The method of claim 3, wherein two of the refastening surfaces are located on the exterior surface of the front waist section and two of the refastening surfaces are located on the body-contacting surface of the back waist section.

5. The method of claim 3, wherein two of the refastening surfaces are located on the body-contacting surface of the front waist section and two of the refastening surfaces are located on the exterior surface of the back waist section.

6. The method of claim 3, wherein, prior to cutting of the web, there are portions of the web that will form adjacent pre-forms and the adjacent pre-forms are joined to each other by the back waist section of one pre-form and the back waist section of the adjacent pre-form.

8. The method of claim 4, further comprising a step of folding inward a portion of the longitudinal edge of the front waist section prior to jointly rotating the gripping means to facilitate joining of the superimposed refastening surfaces.

9. The method of claim 3, wherein two of the refastening surfaces are located on the body-contacting surface of the front waist section and two of the refastening surfaces are located on the body-contacting surface of the back waist section.

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#### PRIOR ART

The prior art references relied upon by the examiner in support of the Section 103 rejections before us are:

Roessler et al. (Roessler)	5,399,219	Mar. 21, 1995
Schmitz	5,779,831	Jul. 14, 1998
Widlund et al. (Widlund)	6,210,388 B1	Apr. 3, 2001 (Published Oct. 19, 1995)
Fletcher et al. (Fletcher)	WO 00/37009	Jun. 29, 2000
(Published International Application) <sup>3</sup>		
Johansson et al. (Johansson)	2 303 045 A	Feb. 12, 1997 <sup>4</sup>
(Published UK Patent Application)		

#### REJECTIONS

The appealed claims stand rejected as follows:

1. Claims 1 through 3, 5, 7, 11 through 14 and 20 under 35 U.S.C. § 103 as unpatentable over the combined disclosures of Schmitz and Widlund;

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<sup>3</sup> In reference to this published foreign document (Fletcher), we provide its publication number and date, rather than the unpublished international application number "PCT/US99/29704" (a designation which is given to a PCT application prior to its publication date) and incorrect filing date supplied by the examiner at page 3 of the Answer.

<sup>4</sup> In reference to this published foreign document (Johansson), we provide its publication date since such date (not the filing date supplied by the examiner) is relevant to its prior art status. The examiner mentions the filing date of this published foreign patent application at page 3 of the Answer.

2. Claims 4, 8 and 15 through 18 under 35 U.S.C. § 103 as unpatentable over the combined disclosures of Schmitz, Widlund and Fletcher;
3. Claims 6 and 19 under 35 U.S.C. § 103 as unpatentable over the combined disclosures of Schmitz, Widlund and Roessler; and
4. Claims 9, 10 and 21 through 23 under 35 U.S.C. § 103 as unpatentable over the combined disclosures of Schmitz, Widlund and Johansson.

#### DISCUSSION

We have carefully reviewed the claims, specification and prior art, including all of the evidence and arguments advanced by both the examiner and the appellants' in support of their respective positions. This review has led us to conclude that the examiner's Section 103 rejections are well founded. Accordingly, we affirm the examiner's Section 103 rejections for essentially the factual findings and conclusions set forth in the Answer and below.

As acknowledged by the appellants' (Brief, page 12), Schmitz teaches (column 1, line 43 to column 2, line 1) that:

The method according to the invention comprises the steps of:

transporting the web in a substantially flattened position on a transport means along a transport trajectory;

cutting the web along a second transverse edge to form a two-dimensional pre-form, the pre-form comprising the first and the second transverse edge of the web and two longitudinal edges, each longitudinal edge having two waist sections and a crotch section located intermediate the waist sections, a sealing area being located adjacent and inboard of each waist section;

gripping the pre-form adjacent each waist section with gripping means in four gripping areas, the gripping areas being located near each sealing area; jointly rotating at least the gripping means which hold the gripping areas in the region of the first transverse edge around a first axis of rotation extending substantially parallel to the transverse edges of the pre-form to place the first transverse edge generally parallel and opposite to the second transverse edge;

superimposing the sealing areas which are located along the same longitudinal side in a contacting relationship;

joining the superimposed sealing areas in a sealing means, thus forming the absorbent article, and releasing the absorbent article from the gripping means.

With respect to claim 1, the question here is whether one of ordinary skill in the art would have been led to "preconditioning the web to include at least four refastening surfaces" on the

sealing areas referred in Schmitz. On this record, we answer this question in the affirmative.

According to page 4 of the specification:

"Preconditioning" of the web includes the incorporation or application of the refastening surfaces into or onto the web. The web material themselves can be conditioned to form a refastening surface; for example, portion of the liner or outer cover can be configured to provide refastening surfaces. Typically, **disposable absorbent garments** are made from various nonwoven materials. Nonwoven materials can be selected to be engageable with hook material and other mechanical fasteners and therefore, to be refastening surfaces. Additionally, separate refastening materials can be applied onto the web; for example, hook material and other mechanical fastening materials can be adhered or bonded to the web. The web can be preconditioned to include more than one type of refastening surface. (Emphasis added.)

Although Schmitz does not use the term "preconditioning" recited in the claims on appeal, it does teach that overlapping searing areas can be sealed with "ultrasonic bonding, pressure bonding, heat sealing adhesive attachment, or mechanical attachment." See column 2, lines 34-49, column 5, lines 50-60 and column 6, lines 4-6. The fact that sealing areas can be bonded, for example, by applying pressure indicates that the sealing areas of the web are pretreated to provide sealable materials (sealing adhesives, heat sealable thermoplastic material, etc...) on the sealing areas

prior to cutting the web. Moreover, Schmitz specifically teaches (column 2, lines 41-49) that

in case the undergarment is formed by a **disposable absorbent article**, the overlapping side seams have a high shear strength but can easily be manually detached for disposal of the absorbent article. The overlapping seams may alternatively be connected by mechanical fasteners, such as Velcro® hook-type and loop-type materials or by means of adhesive tapes. Such re-fastenable seams can be undone by the user without ripping the article and can be reclosed for further use. (Emphasis added.)

Thus, we concur with the examiner that one of ordinary skill in the art interested in forming a disposable absorbent article would have been led to provide re-fastenable surfaces or mechanical fasteners on the sealing areas of the web taught by Schmitz prior to its cutting, motivated by a desire to avoid "ripping the article" and to re-close the article for "further use." From our perspective, one of ordinary skill in the art would have had a reasonable expectation of successfully fastening the web by providing mechanical fasteners or re-fastenable surfaces to the sealing areas of the web taught by Schmitz prior to cutting the web. This is especially true in this case since the sealing areas of the web taught by Schmitz can be joined or fastened so long as the fasteners are provided to the sealing areas of the web at any time (including before the cutting) prior



to joining the sealing areas of the web. Compare In re Hampel, 162 F.2d 483, 485, 74 USPQ 171, 173 (CCPA 1947) (Mere change of a sequence is not a patentable modification of a known process); In re Burhans, 154 F.2d 690, 692, 69 USPQ 330, 332 (CCPA 1946). Indeed, Widlund also teaches that it is well known to form hook and loop refastening surfaces on a web prior to joining the refastening surfaces, i.e., before cutting the web, in a similar process for forming a pants diaper. See column 3, line 34 to column 4, line 49 and column 7, lines 7-27, conjunction with Figures 1, 2 and 11.

With respect to claims 4, 5 and 9, we concur with the examiner that Fletcher and Johansson would have suggested locating refastening surfaces in the claimed areas to form the disposable absorbent article of the type discussed in Schmitz. We also note that Schmitz illustrates in its Figures 1 and 2 absorbent articles having sealing (refastening) surfaces in the locations recited in claims 4, 5 and 9. See also column 5, line 37 to column 6, line 17.

With respect to claim 6, we note that Schmitz illustrates the claimed portions of the web that will form adjacent pre-forms which are joined to each other by the back waist section of one pre-form and the back waist section of the adjacent pre-form.

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Compare Schmitz, Figures 24 and 25 with the appellants' Figures 19 and 20.

With respect to claim 8, we note that Schmitz teaches partially bending inwardly a portion of the longitudinal edge of the web on a pick-up drum prior to rotating it with gripping means. See column 9, line 49 to column 10, line 8, together with Figures 14-17.


#### CONCLUSION


In view of the foregoing, we determine that the examiner has established a prima facie case of obviousness regarding the claimed subject matter, which is not adequately rebutted by the appellants. Accordingly, we affirm the examiner's decision rejecting the claims on appeal 35 U.S.C. § 103.

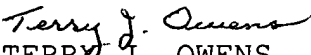
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No time period for taking any subsequent action in  
connection with this appeal may be extended under 37 CFR  
§ 1.136(a).

AFFIRMED

  
EDWARD C. KIMLIN )  
Administrative Patent Judge )

  
CHUNG K. PAK )  
Administrative Patent Judge )

  
TERRY J. OWENS )  
Administrative Patent Judge )

BOARD OF PATENT  
APPEALS AND  
INTERFERENCES

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